PROCEDURAL CONSIDERATIONS IN PIERCING THE CORPORATE VEIL: A SURVEY OF JURISPRUDENCE*

*Alayza C. Azis***
*Kent A. Alonzo****
*Jose Maria L. Marella*****

PIERCING THE VEIL OF JURISPRUDENTIAL OBSCURITY

May the courts pierce the corporate veil in order to impose liability on a party that was not impleaded at the first instance? If so, until what stage of the proceedings may the courts do so? Considering the stage of the proceedings, what procedure must be observed?

These were the core questions presented by six Supreme Court decisions, which, when cursorily studied together, appear to proffer no definitive guiding principles. Not all of these cases are fairly recent;[1] nor are these the only decisions which sought, but failed, to categorically resolve such issues.[2] Nevertheless, this Note assesses the extent to which such jurisprudence might have hinted at resolving the above quandaries.

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* *Cite as* Alayza C. Azis, Kent A. Alonzo & Jose Maria L. Marella, *Procedural Considerations in Piercing the Corporate Veil: A Survey of Jurisprudence*, 91 PHIL. L.J. 666, (page cited) (2018).

** J.D., University of the Philippines (UP) College of Law (2020, *expected*); B.S. Business Administration, *cum laude,* UP College of Business Administration (2015); Student Editorial Assistant, PHILIPPINE LAW JOURNAL Vol. 91.

*** J.D., UP College of Law (2021, *expected*); B.A. Philosophy, *cum laude,* UP College of Social Science and Philosophy (2017); Student Editorial Assistant, PHILIPPINE LAW JOURNAL Vol. 91.

**** J.D., UP College of Law (2019, *expected*); B.S. Economics, *summa cum laude*, UP School of Economics (2014); Policy Research Officer, Philippine Competition Commission (2016-2018); Editor, Student Editorial Board, PHILIPPINE LAW JOURNAL Vol. 91; Member, Order of the Purple Feather (2015-2019).

[1] The first of such decisions was penned in 2010, another in 2012, the next two in 2014, and the last two in 2015 and 2016.

[2] The six cases discussed in this Note more or less pick up from the debate left by the precursor cases. Such cases were discussed in CESAR VILLANUEVA & TERESA VILLANUEVA-TIANSAY, PHILIPPINE CORPORATE LAW 130-37 (2013). These are the cases of McConell v. Ct. of Appeals, G.R. No. 10510, 1 SCRA 723, Mar. 17, 1961; Emilio Cano Enterprises, Inc. v. Ct. of Indus. Rel., G.R. No. 20502, 13 SCRA 291, Feb. 26, 1965; Nat'l Marketing Corp. v. Associated Finance Co., Inc., G.R. No. 20886, 19 SCRA 962, Apr. 27, 1967; Sunio v. NLRC, G.R. No. 57767, 127 SCRA 390, Jan. 31, 1984; A.C. Ransom Labor Union-CCLU v. NLRC, G.R. No. 69494, 142 SCRA 269, June 10, 1986; Villanueva v. Adre, G.R. No. 80863, 172 SCRA 876, Apr. 27, 1989; Lim v. NLRC, G.R. No. 79907, 171 SCRA 328, Mar. 16, 1989; Del Rosario v. NLRC, G.R. No. 85416, 187 SCRA 777, July 24, 1990; Western Agro Indus. Corp. v. Ct. of

Part I of this Note discusses the six cases by scrutinizing the Court's *ratio decidendi*, testing the consistency of the arguments, appraising them against long-established principles, and comparing such cases with each other. Part II, in an attempt to reconcile the patent inconsistencies, recreates the Court's language to fashion a workable procedural framework. Part III, before concluding, discusses the value of the framework so developed.

I. JURISPRUDENCE: 2010 TO 2016

In the 2010 case of *Kukan International Corp. v. Reyes*,[3] Romeo Morales filed a complaint for sum of money naming Kukan, Inc. ("KI") as the defendant. Notably, after filing its answer with counterclaim, KI stopped participating in the trial. When the Regional Trial Court's ("RTC") decision favorable to Morales had become final and executory, the sheriff levied personal properties found in KI's supposed office. Kukan International Corporation ("KIC"), claiming to be a different entity, filed an Affidavit of Third-Party Claim seeking to recover the levied properties. Curiously, KIC was incorporated only shortly after KI ceased to participate in the court proceedings.

Morales then filed an Omnibus Motion, coupled with a Motion for Examination of Judgment Debtors, to pierce the corporate veil of KIC and have it declared as one and the same with KI. Both the RTC and Court of Appeals ("CA") pierced KIC's corporate veil and adjudged it liable for KI's obligations.

Presented before the Supreme Court were three issues: (i) whether or not the final and executory decision can be enforced against KIC, an entity not impleaded before the RTC; (ii) whether or not the RTC had properly acquired jurisdiction over KIC; and (iii) whether or not KIC's corporate veil was properly pierced.

Appeals, G.R. No. 82558, 188 SCRA 709, Aug. 20, 1990; Pabalan v. NLRC, G.R. No. 89879, 184 SCRA 495, Apr. 20, 1990; Jacinto v. Ct. of Appeals, G.R. No. 80043, 198 SCRA 211, June 6, 1991; De Guzman v. NLRC, G.R. No. 90856, 211 SCRA 723, July 23, 1992; Arcilla v. Ct. of Appeals, G.R. No. 89804, 215 SCRA 120, Oct. 23, 1992; EPG Construction Co., Inc. v. Ct. of Appeals, G.R. No. 103372, 210 SCRA 230, June 22, 1992; Pres. Commission on Good Gov't v. Sandiganbayan, G.R. No. 119609-10, 365 SCRA 538, Sept. 21, 2001; Padilla v. Ct. of Appeals, G.R. No. 123892, 370 SCRA 208, Nov. 22, 2001; Lafarge Cement Phils., Inc. v. Continental Cement Corp., G.R. No. 155173, 631 SCRA 596, Nov. 23, 2004; *and* Violago v. BA Finance Corp., G.R. No. 158262, 559 SCRA 69, July 21, 2008.

[3] Hereinafter "*Kukan*", G.R. No. 182729, 631 SCRA 596, Sept. 29, 2010.

The Court, speaking through Justice Presbitero Velasco, Jr., resolved the first issue by ruling that, while trial courts retain general supervisory control over the execution of their decisions, such control does not sanction an alteration of a final judgment. Citing *Tan v. Timbal*,[4] the Court characterized the execution of the judgment against KIC as an "[a]n order of execution which varies the tenor of judgment or exceeds the terms thereof," and concluded that it was "a nullity."[5]

Addressing the second issue, the Court ruled that the RTC had never acquired jurisdiction over KIC as it was not impleaded at the first instance; neither did the latter's pleadings and motions amount to a voluntary submission to the RTC's jurisdiction.

On to the third issue, the SC ruled that piercing the corporate veil "is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case."[6] Citing commercial law expert Aguedo Agbayani,[7] the SC laid down a two-fold requirement in piercing the corporate veil:

> (1) the court must first acquire jurisdiction over the corporation or corporations involved before its or their separate personalities are disregarded; and (2) the doctrine of piercing the veil of corporate entity can only be raised during a full-blown trial over a cause of action duly commenced involving parties duly brought under the authority of the court by way of service of summons or what passes as such service.[8]

Other than the excerpt from Agbayani, the Court did not cite any other basis to support the two-fold requirement it crafted. It then went on to decide on the merits, saying that the RTC and the CA failed to demonstrate the elements that called for a piercing of the corporate veil. It is submitted that going into such a probe is a rather inconsistent posture. Applying the Court's own pronouncement on the two-fold requirement, the piercing analysis was

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[4] G.R. No. 141926, 434 SCRA 381, July 14, 2004.

[5] *Id.* at 386.

[6] *Kukan*, 631 SCRA at 619.

[7] 3 AGUEDO AGBAYANI, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES 18 (1991). "Piercing the veil of corporate entity applies to determination of liability not of jurisdiction [...] This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation. Hence, before this doctrine can be applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation."

[8] *Kukan*, 631 SCRA at 619.

but a superfluity—the Court could have disposed of the matter by, applying its own logic, reasoning that jurisdiction was never obtained over KIC.

Still relative to the third issue, the Court held that the filing of a mere motion to pierce the corporate veil was improper as such constitutes a new cause of action more appropriately presented through a new complaint.

All in all, *Kukan* adheres to a strict observance of two basic but mutually reinforcing principles: (i) due process and fair play; and (ii) the doctrine of separate juridical personality. By requiring that jurisdiction must first be obtained over the entity whose veil is sought to be pierced, *Kukan* set a rather high threshold for observing the first principle. Consequently, a mere motion would not suffice as a procedural vehicle to pierce the corporate veil. Curiously, the Supreme Court's *ratio* did not address the suspicious sequence of events by which KIC suddenly materialized when KI ceased participating in the lower court proceedings. Such was brushed aside when the Court unhesitatingly and unimaginatively applied the doctrine of separate juridical personality, saying that KIC and KI are two different entities.

The Supreme Court applied a different mode of analysis and arrived at a different conclusion in the 2012 case of *Gold Line Tours, Inc. v. Heirs of Lacsa.*[9]

While on board a Gold Line passenger bus, Concepcion Lacsa met an accident that led to her untimely death. Her heirs sued for breach of contract of carriage against Travel and Tours Advisers, Inc. ("TTAI"). The RTC found for plaintiffs, which decision became final after defendants failed to make a timely appeal to the CA. The decision having attained finality, the plaintiffs moved for a writ of execution which was served upon TTAI and its manager, William Ching. By virtue of the writ, the sheriff levied a bus, and like KIC in *Kukan*, Gold Line Tours, Inc. ("GLTI") filed a third-party claim alleging that it was a separate entity not impleaded before the RTC, and that the sheriff had wrongfully levied on its property.

Both RTC and CA found TTAI and GLTI to be one and the same. On the part of the RTC, it scrutinized the documents that GLTI submitted in support of its third-party claim; it found William Ching to be the operator of both GLTI and TTAI. This was coupled by the RTC taking judicial notice of the fact that TTAI has, since the start of its operations in Sorsogon, been known as Gold Line. The CA, on the other hand, pointed to Ching's fatal admission during the trial: he claimed that TTAI was operating Gold Line buses. Moreover, GLTI's Amended Articles of Incorporation indicated Ching

[9] Hereinafter "*Gold Line*", G.R. No. 159108, 673 SCRA 399, June 18, 2012.

as an original incorporator. Finally, the CA observed how Ching did not object to GLTI's name being added as defendant in the complaint.

The issue before the Supreme Court was whether or not TTAI and GLTI were one and the same so as to deny the third-party claim?

The Court, through Justice Lucas Bersamin, lent credence to both RTC's and the CA's findings. Furthermore, it called out GLTI's misuse of its separate juridical personality: "this fiction of law could not be employed to defeat the ends of justice."[10]

If the *Kukan* standards were to be applied in *Gold Line*, the heirs of Lacsa would have been denied relief. First of all, GLTI was not impleaded in the lower court proceedings but was merely reined in by the trial court when the third-party claim was filed. As regards the requirement of piercing through a full-blown hearing, it could be argued that, even if Ching was found to be the operator of both companies, Ching had only been testifying in representation of TTAI during the trial. Nevertheless, his fatal admissions were just too glaring for the courts to disregard. Other than the stroke of luck that defendants shot themselves in the foot, the courts also appreciated the RTC and CA findings that inevitably urged it to pierce GLTI's corporate veil.

Gold Line highlights a consideration that was unarticulated in *Kukan*—that piercing the corporate veil aims "to avoid multiplicity of suits and thereby save the parties unnecessary expenses and delay."[11] Further to such consideration, in case plaintiffs discovered mid-trial the party against whom the decision should be executed, *Gold Line* suggested a viable procedural remedy: substitution of the real party-in-interest.[12]

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[10] *Id.* at 411.

[11] *Id.* at 409-10, *citing* Alonso v. Villamor, G.R. No. 2352, 16 Phil. 315, July 26, 1910.

[12] *See* RULES OF COURT, Rule 3, § 19. "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." *See* Alonso v. Villamor, 16 Phil. at 320. "We are confident under these provisions that this court has full power, apart from that power and authority which is inherent, to amend the process, pleadings, proceedings, and decision in this case by substituting, as party plaintiff, the real party in interest. Not only are we confident that we may do so, but we are convinced that we should do so." *See also* Palacio v. Fely Transportation Co., G.R. No. 15121, 5 SCRA 1011, 1015, May 31, 1962. "And while it is true that Isabelo Calingasan is not a party in this case, yet, is held in the case of Alonso v. Villamor, 16 Phil. 315, this Court can substitute him in place of the defendant corporation as to the real party in interest. This is so in order to avoid multiplicity of suits and thereby save the parties unnecessary expenses and delay."

The *Kukan* ruling would be carried over into the subsequent cases of *Pacific Rehouse Corp. v. Court of Appeals*[13] and *Pioneer Insurance v. Morning Star*.[14]

Pacific Rehouse is an offshoot of a previous decision[15] involving Pacific Rehouse Corporation and EIB Securities, Inc. ("E-Securities"). The Supreme Court in the previous decision ordered E-Securities to return to Pacific Rehouse the latter's shares that the former sold without authorization. Unable to execute the decision against E-Securities, Pacific Rehouse moved for the issuance of an *alias* writ of execution to seize the properties of Export Industry Bank, Inc. ("EIB"), the parent corporation of E-Securities. Pacific Rehouse alleged that E-Securities is a mere alter ego and business conduit of EIB.

Siding with Pacific Rehouse, the RTC issued the *alias* writ to be implemented against EIB. The RTC relied on jurisprudence [16] where, purportedly, the corporate veil was pierced even if the affected corporation was not brought to court as a party. The CA reversed the RTC, pointing out that (i) mere parent-subsidiary relation, and (ii) interlocking directors, incorporators, and officers were circumstances insufficient *per se* to warrant the piercing of the corporate veil. Moreover, Pacific Rehouse failed to demonstrate EIB's complete control over E-Securities and, adhering to the doctrine of separate juridical personality, the obligation sought to be enforced was solely E-Securities'.

The Supreme Court ruled for EIB, citing the two-fold requirement of *Kukan*. It added, through Justice Bienvenido Reyes, that

> the court must first and foremost acquire jurisdiction over the parties; and only then would the parties be allowed to present evidence for and/or against piercing the veil of corporate fiction. If the court has no jurisdiction over the corporation, it follows that the court has no business in piercing its veil of corporate fiction because such action offends the corporation's right to due process.

EIB, according to the Court, was never made a party to the case as it was neither served with summons nor did it voluntarily submit to the trial court's jurisdiction.

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[13] Hereinafter "*Pacific Rehouse*", G.R. No. 199687, 719 SCRA 665, Mar. 24, 2014.

[14] Hereinafter "*Pioneer*", G.R. No. 198436, 762 SCRA 283, July 8, 2015.

[15] Pacific Rehouse Corp. v. EIB Securities, Inc., G.R. No. 184036, 633 SCRA 214, Oct. 13, 2010.

[16] Violago v. BA Finance Corp., G.R. No. 158262, 559 SCRA 69, July 21, 2008 *and* Arcilla v. Ct. of Appeals, G.R. No. 89804, 215 SCRA 120, Oct. 23, 1992.

Interestingly, as in *Kukan*, the Court proceeded to an in-depth piercing analysis in order to absolve EIB of liability. It failed to adhere to its own pronouncement that jurisdiction must first be had before such analysis may proceed; otherwise put, it could have easily disposed of the issue by simply saying that the courts never acquired jurisdiction over EIB.

Pioneer is another case where a non-party was spared from liability because it was not impleaded at the first instance. Pioneer filed a collection suit against Morning Star Travel & Tours, Inc. in order to reimburse the payments which Pioneer, being an insurance company, made in satisfaction of the latter's obligation.

The RTC held Morning Star liable, along with other individual respondents, but the CA modified the RTC ruling by deleting the liability imposed on the individuals. Before the SC, Pioneer alleged that "a new travel agency called Morning Star Tour Planners, Inc. now operates at the Morning Star's former principal place of business in Pedro Gil, Manila, with the children of individual respondents as its stockholders, directors, and officers."[17]

Citing both *Kukan* and *Pacific Rehouse*, the Supreme Court, through Justice Marvic Leonen, held that compliance with the recognized modes of acquiring jurisdiction cannot be dispensed with even in piercing the veil of corporate fiction. Being a distinct entity, Morning Star Tour Planners' right to due process would be violated if Morning Star Travel and Tour's liability would be imposed on the former.

Again, as in *Kukan* and *Pacific Rehouse*, the Court proceeded to perform a substantial piercing analysis based on the facts on record. Unsurprisingly, it found that the circumstances did not warrant a piercing of the corporate veil.

The remaining two cases take after the *Gold Line* ruling. In *Livesey v. Binswanger Philippines, Inc.*,[18] Eric Livesey filed a case for illegal dismissal and damages, naming as defendants CBB Philippines Strategic Property Services, Inc. ("CBB") and Paul Dwyer. The case terminated upon a compromise agreement where Livesey was to receive USD 31,000.00 broken down into three installments: USD 13,000.00 to be paid upon signing of the agreement; USD 9,000.00 on or before June 30, 2003; and USD 9,000.00 on or before September 30, 2003. Livesey received the first installment but thereafter, CBB did not follow through. He then moved for a writ of execution which was returned unsatisfied as CBB supposedly ceased operations. Alleging that CBB willfully avoided it liabilities by feigning cessation of operations and

[17] *Pioneer*, 762 SCRA at 293.

[18] G.R. No. 177493, 719 SCRA 433, Mar. 19, 2014.

subsequently organizing as Binswanger Philippines, Inc. ("Binswanger"), he moved for an *alias* writ of execution to be enforced against Binswanger and Keith Elliot, CBB's former President and now Binswanger's President and Chief Executive Officer.

The Labor Arbiter ("LA") denied the motion for an *alias* writ, saying that CBB and Binswanger were different entities and that the ruling had long become final and executory. Upon appeal, the National Labor Relations Commission ("NLRC") reversed the LA, arguing that the two entities are one and the same. Upon further appeal, the CA reinstated the LA's ruling.

For the Supreme Court, speaking through Justice Arturo Brion, piercing the corporate veil was justified by the circumstances. With a suspicious eye, the Court found it too coincidental that Binswanger materialized right after CBB ceased operations; moreover, the two entities were engaged in the same line of business. Other telling circumstances consisted of: (i) Binswanger holding office in the very same floor where CBB used to operate; (ii) CBB's key officers were now with Binswanger; (iii) the defendant's employee inadvertently gave Binswanger away when, through an e-mail, she said that Binswanger is "now known" as CBB; (iv) Binswanger had used CBB's old receiving stamp in connection with one case; and (v) Binswanger took over CBB's project with the Philippine National Bank.[19]

As in *Gold Line*, the Court in *Livesey* could not turn a blind eye towards the blatant circumstances that were on record; just that in *Gold Line*, the plaintiffs benefitted from defendant Ching's fatal admission while in *Livesey*, the evidence presented by Livesey was clear and convincing, more than making up for the absence of any fatal admissions.

Finally, the most recent case of *Guillermo v. Uson*[20] also concerned illegal dismissal and a prayer for monetary award. Crisanto Uson was employed by Royal Class Venture ("RCV"), the named defendant in the action. Uson won the suit and after successive writs of execution failed to be served, he filed a Motion for an *Alias* Writ of Execution and to Hold Directors and Officers of Respondent Liable for Satisfaction of the Decision. The Motion quoted from the Sheriff's previous return where the latter attested to the following dubious circumstances:

> I found out that the establishment erected thereat is not [in] the respondent's name but JOEL and SONS CORPORATION, a family corporation owned by the Guillermos of which, Jose Emmanuel F.

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[19] *Id.* at 449.

[20] Hereinafter "*Guillermo*", G.R. No. 198967, 785 SCRA 543, Mar. 7, 2016.

> Guillermo the General Manager of the respondent, is one of the stockholders who received the writ using his nickname "Joey," [and who] concealed his real identity and pretended that he [was] the brother of Jose, which [was] contrary to the statement of the guard-on-duty that Jose and Joey [were] one and the same person. The former also informed the undersigned that the respondent's (sic) corporation has been dissolved.[21]

Hence, Uson wanted to pierce RCV's corporate veil to hold Guillermo, as President and General Manager of the Company, personally liable. The LA, NLRC, and CA were one in piercing the corporate veil and holding Guillermo personally liable.

The Supreme Court tackled two issues: (i) whether an officer of a corporation may be included as judgment obligor in a labor case for the first time only after the decision of the Labor Arbiter had become final and executory; and (ii) whether the twin doctrines of piercing the veil of corporate fiction and personal liability of company officers in labor cases apply.

On the first issue, the Court, through Justice Diosdado Peralta, made a factual finding that Guillermo was served with summons in the first instance. Hence, while the initial receipt of summons was in his official capacity as President and Manager of the RCV, this sufficed to acquire jurisdiction over his person and, eventually, lay the predicate for the *alias* writ to be enforced against him in his personal capacity.

On the second issue, the SC cited a litany of cases[22] where a corporate officer was held liable even if not impleaded at the first instance. Integrated into the foregoing analysis was the SC's disquisition on piercing the corporate veil; it laid down the requirement that plaintiff must establish that such individuals have deliberately used the corporate vehicle to unjustly evade the judgment obligation, or have resorted to fraud, bad faith or malice in doing so.

Guillermo must be distinguished from the five other cases in two important respects. *First*, liability in *Guillermo* was sought to be enforced not against another entity claiming to be a non-party to the case, but rather against

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[21] *Id.* at 549.

[22] Claparols v. Ct. of Indus. Rel., G.R. No. 30822, 160 Phil. 624, July 31, 1975; A.C. Ransom Labor Union-CCLU v. Nat'l Lab. Rel. Commission, G.R. No. 69494, 226 Phil. 199 June 10, 1986; Naguiat v. Nat'l Lab. Rel. Commission, G.R. No. 116123, 336 Phil. 545, Mar. 13, 1997; Reynoso v. Ct. of Appeals, G.R. No. 116125-25, 399 Phil. 38, Nov. 22, 2000; McLeod v. Nat'l Lab. Rel. Commission, G.R. No. 146667, 541 Phil. 214, Jan. 23, 2007; Sps. Santos v. Nat'l Lab. Rel. Commission, G.R. No. 120944, 354 Phil. 918, July 23, 1998; *and* Carag v. Nat'l Lab. Rel. Commission, G.R. No. 147590, 548 Phil. 581, Apr. 2, 2007.

a corporate officer who claimed to have not been impleaded in his personal capacity.[23] *Second*, the Court made a specific finding of fact that Guillermo had received the summons; this laid the predicate of his bad faith in refusing to participate in the proceedings, and served to confer jurisdiction over his person, ultimately making him personally liable. In the previous cases, the non-party to the suit, whether ultimately absolved or found liable, was only brought to court after the decision had become final and executory.

Having gone over all six cases individually, some overarching points are observed.

First, the *Kukan* pronouncement—that piercing the corporate veil cannot be done by mere motion after judgment has attained finality—appears to have been overruled by the more recent cases of *Livesey* and *Guillermo*. In both cases, the respective plaintiffs filed before the LA a mere motion for a writ of execution to be issued against the appropriate person. Such were granted and resort to such procedural remedy was not questioned, much less declared improper, before higher tribunals.

Such a remedy does not necessarily offend the tenets of due process. After all, a "denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard."[24] A non-party to the suit, whether in fact guilty or innocent, can very well defend itself by filing its comment to the motion or upon hearing for such motion.[25] *Kukan* itself unwittingly provides the basis for the courts to resolve piercing questions even beyond finality of judgment: the doctrine of general supervisory control where

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[23] In this regard, a conceptual distinction should be drawn between piercing cases and those where a corporate officer is made liable by specific provision of law, *e.g.* CORP. CODE, § 31: "Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons."; *and* Rep. Act No. 602, § 15(b): "If any violation of this Act is committed by a corporation, trust, partnership or association, the manager or in his default, the person acting as such when the violation took place, shall be responsible. In the case of a government corporation, the managing head shall be made responsible, except when shown that the violation was due to an act or commission of some other person, over whom he had no control, in which case the latter shall be held responsible." The cases cited in the immediately preceding footnote reflect the SC's amalgamation of the two doctrines; the specific interplay between such is an entirely different matter which deserves an altogether separate treatment.

[24] Gonzales v. Civ. Service Comm'n, G.R. No. 156253, 490 SCRA 741, 746, June 15, 2006.

[25] *See* RULES OF COURT, Rule 15.

the courts have "the right to determine *every question of fact and law* which may be involved in the execution [of judgment]."[26]

Without offending the tenets of due process, resort to the filing of a mere motion is all the more justified when the non-party to the suit is in fact guilty. The "unclean hands" doctrine[27] could be applied to a guilty non-party; precisely because a purported non-party fraudulently evaded trial proceedings, it cannot claim a denial of due process for not having been impleaded. Such doctrine actually finds a parallel pronouncement in piercing the corporate veil: "corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions[.]"[28]

Expressed in another manner, piercing the corporate veil is a function of equity[29] and the Supreme Court has, in numerous instances, ruled that equity considerations can transcend procedural strictures.[30]

As an offsetting consideration against any perceived diminution of due process standards, one must recall the wisdom of the *Gold Line* ruling: that the filing of a motion in order to pierce the corporate veil avoids multiplicity of suits.

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[26] *Kukan*, 631 SCRA 596, 608, *citing* Carpio v. Doroja, G.R. No. 84516, 180 SCRA 1, 7, Dec. 5, 1989. (Emphasis supplied.)

[27] *See* Remo v. Bueno, G.R. No. 175736, 789 SCRA 148, Apr. 12, 2016.

[28] *Livesey*, 719 SCRA at 449, *citing* National Fed'n of Lab. Union v. Ople, No. L-68661, 143 SCRA 124, July 22, 1986.

[29] Pantranco Employees Association v. Nat'l Lab. Rel. Comm'n, G.R. No. 170689, 581 SCRA 598, 613-614, Mar. 17, 2009. "[W]hen two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same."

[30] *See* Bago v. People, G.R. No. 135638, 443 Phil. 503, 505-06, Jan. 20, 2003. "[I]t is axiomatic that Rules of Court, promulgated by authority of law, have the force and effect of law. More importantly, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. Strict compliance with such rules is mandatory and imperative. Only strong considerations of equity [...] will lead us to allow an exception to the procedural rule in the interest of substantial justice." *See also* Gov't. of the Kingdom of Belgium v. Ct. of Appeals, G.R. No. 164150, 551 SCRA 223, 241-42, Apr. 14, 2008. "In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the courts leniency it is imperative that: x x x (b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice[.]"

Second, the two-fold requirement laid down in *Kukan* is a rather restrictive rubric such that if one were to take the Court's pronouncements literally, then only few piercing cases would prosper.

On the first tier of the requirement, for jurisdiction to be obtained over a defendant, remedial law requires either service of summons or voluntary appearance.[31] The first mode would be infeasible in instances where, mid-trial, the defendant had absconded or spirited its assets away, thereby depriving plaintiffs a means of relief. It would likewise work an absurdity in the alter ego derivative of piercing cases, for the named defendant could very well just be a hollow shell while the truly guilty party can get away scot free simply for not having been impleaded. As for the second mode of acquiring jurisdiction, the true defendant simply has to be assiduous enough not to give itself away.

The foregoing concerns are also engendered by the second tier of the requirement. By requiring a "full-blown trial over a cause of action duly commenced involving parties duly brought under the authority of the court by way of service of summons or what passes as such service"[32] the Court seems to overlook mid-trial disappearance or asset dissipation, as well as alter-ego scenarios.

The effect of such rigid standards is that plaintiffs are penalized while malicious defendants are rewarded for the latter's ingenuity in evading court processes. The better rule, as discussed in the *first* point above, is presented by the cases of *Gold Line* and *Livesey*, where piercing may be undertaken by way of motion even after judgment has attained finality.

Nevertheless, the doctrine espoused in *Kukan*, reiterated in *Pacific Rehouse* and *Pioneer*, can, at best, be construed as a general rule; the two-fold requirement unconditionally adheres and gives effect to the interrelated principles of due process and separate juridical personality. Just that, in certain exceptional cases, as in *Gold Line*, *Livesey*, and *Guillermo*, adherence to the higher and stricter standard would lead to absurdity and injustice.

Third, in *Kukan*, *Pacific Rehouse*, and *Pioneer*, the Supreme Court was bold enough to lay down the stricter two-fold requirement precisely because it went into a substantial piercing analysis and found, as a matter of fact and law, that piercing was not warranted. Expressed in another way, these three cases demonstrate a sort of "chicken-and-egg" dilemma because, notwithstanding its requirement that jurisdiction must first be obtained before any piercing analysis

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[31] RULES OF COURT, Rule 14. *See* Orion Security Corp. v. Kalfam Enterprises, Inc., G.R. No. 163287, 522 SCRA 617, 622, Apr. 27, 2007.

[32] *Kukan*, 631 SCRA at 619.

could be performed, the Court did go into such substantial analysis even if it ruled that jurisdiction over the non-party was not obtained—a peculiarity in the Court's reasoning that this Note had taken pains to point out. Otherwise, if the Supreme Court, in these three cases, had been faithful to its own pronouncements, then it would have disposed of the issue simply on the failure of plaintiff to implead such parties. Palpably, the Court was being cautious by avoiding a situation where it would dismiss the case on purely procedural grounds but unwittingly inflict an injustice to plaintiffs.

Such manner of disquisition urges that, for good measure, the courts must perform a substantial piercing analysis based on all the facts on record. It is immaterial whether or not the appropriate defendant was impleaded at the first instance so long as there was some court process that allowed it an opportunity to be heard, e.g. by its own undoing through a third-party claim,[33] motion by plaintiff after final judgment,[34] or substitution of real party-in-interest mid-trial.[35] In which case, plaintiff must exert utmost diligence in ensuring that clear and convincing proof of the fraud is made of record.

II. SYNTHESIZING THE RULES AND JURISPRUDENCE

While jurisprudence has yet to evolve in clarifying the issues discussed above, the current state of the law can nevertheless be synthesized into a workable procedural framework; such that if one were to plot the entire process from filing of the suit to the imposition of liability, the framework would resemble the diagram below.

Plaintiff's perspective		
The proper party must be impleaded and jurisdiction over such party must be obtained via service of summons or voluntary submission. Failing which, must commence a new trial, impleading and acquiring jurisdiction over the proper party.	Plaintiff may file a motion for substitution of the real party-in-interest.	Plaintiff may file a motion to pierce the veil of corporate fiction. This can be coupled with a motion for examination of judgment debtors.

[33] *See* RULES OF COURT, Rule 39, § 16.
[34] Rule 15.
[35] Rule 3, § 19.

Defendant's perspective		
The party impleaded at the first instance must file a motion to dismiss on the ground of failure to state a cause of action Party, through counsel, can also make a special appearance seeking to refute any imputation of voluntary submission	The party not impleaded at the first instance, but now sought to be substituted in the court proceedings, can file an opposition to the motion for substitution.	Defendant may file an affidavit of third party-claim over seized assets, arguing on the basis of separate juridical personality. The party not impleaded at the first instance, but whose assets are now sought to be levied, can file an opposition to the motion to pierce the corporate veil.

FIGURE 1. Diagram of Remedies in Piercing Cases.

If at the first instance a plaintiff seeks to pierce the corporate veil, *Kukan*, *Pacific Rehouse*, and *Pioneer* require that the proper juridical entity be impleaded.[36] This is to ensure that the principle of due process and the doctrine of separate juridical entity are not transgressed—the true defendant in any case has at the very least a right to be heard; and coincidental similarities regarding the nature of two juridical entities do not *per se* suffice to lift the corporate veil.

Thus, observance of *Kukan*'s two-fold requisite is necessary. *First*, plaintiff must either ensure that the entity sought to be held liable has been sent summons, or manifest before the court that the proper party has voluntarily submitted to the court's jurisdiction; and *second*, the court will proceed to a full blown trial to pierce the corporate veil.

The defending party, on the other hand, may raise its separate juridical personality in moving for the dismissal of the case.[37] In bolstering such motion, the party raising it must present evidence that negates its identity as the impleaded defendant. The defendant must also present as much controverting facts as possible so that the case records do not bear any vestige of fraud or any tinge of injustice. For as previously pointed out, the Court still proceeds to a substantial piercing analysis even if it had already found that the procedural considerations are absent. Hence, the controverting evidence serves as a safety valve to ensure that neither injustice nor inequity is inflicted upon the defendant.

Notwithstanding the plaintiff's failure to implead the proper party at the first instance, remedial law still provides viable remedies mid-trial. The

[36] RULES OF COURT, Rule 3, § 2 in relation to Rule 3, § 7.
[37] Rule 16, § 1 (g).

plaintiff may move for substitution of the real party-in-interest and the court can order substitution in place of the impleaded defendant; this is to avoid multiplicity of suits, ultimately saving the plaintiff unnecessary expenses and delay. The defendant, however, may oppose the motion for substitution.

Additionally, plaintiffs can take advantage of situations where the defendant shoots itself in the foot as in *Gold Line*—that is, when there is a self-admission that the corporate identity is one and the same. These are fatal admissions[38] that can win a case for the plaintiff.

Upon reaching post-finality of judgment, the cases demonstrate that a motion for execution—now directed at a party other than the defendant initially impleaded—can properly target the imposition of liability. Of course, the plaintiff would have to hurdle the basic precepts of separate juridical personality as well as the doctrine of immutability of judgments. But where the records clearly and convincingly show that the corporate veil was abused to defeat plaintiff's rights, the courts can issue a writ of execution accordingly. With more reason is the corporate veil pierced if, like in the case of *Guillermo*, summons had already been served to the party sought to be held liable, albeit initially in a different capacity. The courts should not find it difficult to rule for the plaintiff should the latter move for execution against such party.

III. CONCLUSION

The law does not operate in an economic vacuum. They are part and parcel of a nation's economic equilibrium, striking a balance between two overarching concerns.

On the one hand, procedural rules, and the judicial interpretations thereof, permeate the Philippine economic framework, so much so that these are considerations upon which corporations base their business decisions; and if these rules are unclear, corporations would vacillate in their business judgments. To paraphrase from Justice Presbitero Velasco's dissenting opinion in *Heirs of Gamboa v. Teves*,[39] the Philippines cannot, without so much as a notice of policy shift, alter and change the legal and business environment in which the investments were made in the first place. These investors obviously made the decision to do business after studying the legal framework, its restrictions and incentives and so, as a matter of fairness, they must be accorded the right to expect that the same legal climate and the same

[38] Rule 130, § 26.

[39] G.R. No. 176579, 682 SCRA 397, Oct. 9, 2012.

substantive set of rules will remain during the period of their investments.[40] It is thus only natural that corporations expect, upon entering various business sectors, that the assistance and redress that they will seek from the law and the courts is constantly available to them.

Hence, the law, through the doctrine of separate juridical entity and with the procedural requisites for piercing the corporate veil, protects corporations in order that baseless claims, if levied against them, can manageably be brushed aside. Due process must indispensably be afforded to them.

But equally important on the other hand, as the Court has held in the cases discussed herein, is that justice, equity and fair dealing are still accorded utmost respect. The law recognizes that the corporate veil can also be a source of abuse when it is used as an excuse to avoid creditors and other liabilities. Towards that end, jurisprudence has crafted the piercing of the corporate veil as an equitable remedy.

Therefore, the Court gives leeway to plaintiffs who seek justice and compensation from defendants who may be hiding behind dummy juridical identities. The doctrine of separate juridical identity should not prevent the administration of justice. More so, the courts should not be burdened by a multiplicity of suits when a single unbroken proceeding suffices to attain the ends of justice.

This Note has provided a focused discussion on six Supreme Court decisions and attempted to reconcile them into a coherent procedural framework. It is hoped that the work distilled herein not only clarifies some patent jurisprudential inconsistencies but also, and more importantly, influences the course of jurisprudence on the matter.

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[40] *Id.* at 591 (Velasco, *J., dissenting*).